and VANN, JJ., dissented.) *Winter* v. *City of Niagara Falls* (1907), — N. Y. —, 82 N. E. Rep. 1101.

Whatever may be the difference of opinion as to the common law liability of a municipality in tort for the negligence of its servants, there is no doubt on the proposition that such liability can be imposed by statute. Similarly the proceedings which are to be followed in seeking a recovery can be controlled. In one respect such statutes have been strictly construed. Where they require that notice be given the city of any "claim," "claim or claims," "any demand or claim," or "upon any claim or demand," such words do not apply to actions ex delicto, and in general do not make notice a condition precedent to such actions. *Cropper* v. *City of Mexico*, 62 Mo. App. 385; *City of Chadron* v. *Glover*, 43 Neb. 732; *Howell* v. *City of Buffalo*, 15 N. Y. 512; *Sherman* v. *Village of Oneonta*, 142 N. Y. 637; *Shields* v. *Town of Durham*, 118 N. C. 450; *Kelly* v. *City of Madison*, 43 Wis. 638. But the words "upon any claim or demand of whatsoever nature" include both contracts and torts. *Van Frachen* v. *City of Ft. Howard*, 88 Wis. 570. And it has been so held as to the word "claim" alone. *Barrett* v. *City of Mobile*, 129 Ala. 179. In the principal case the charter in terms required the notice of claims for negligence. Legislative regulations of this character are controlling, and a compliance with them is a condition precedent to the bringing of the action. *Barrett* v. *City of Mobile*, 129 Ala. 179; *Hancock County* v. *Leggett*, 115 Ind. 544; *Hastings* v. *Foxworthy*, 45 Neb. 676; *Reed* v. *Madison*, 83 Wis. 171; *Hay* v. *City of Baraboo*, 127 Wis. 1. But a substantial compliance is all that is necessary when the party's injuries prevent, *Walden* v. *City of Jamestown*, 178 N. Y. 213, or where the authorities delay taking action upon a notice. *Dundas* v. *Lansing*, 75 Mich. 499; *Whitney* v. *Port Huron*, 88 Mich. 268. In the form of the notice compliance need only be substantial. *Langley* v. *Augusta*, 118 Ga. 590. It is difficult to see how the city could waive such a requirement. A city may be estopped in pais as to matter relating to real property and contracts. *People* v. *City of Rock Island*, 215 Ill. 488; *City of Mt. Vernon* v. *State*, 71 Ohio St. 428. And the failure of the plaintiff to give notice is waived by the failure of the city to plead the statute in defense, since it is in the nature of a statute of limitations. *Borghart* v. *Cedar Rapids*, 126 Ia. 313; *O'Connor* v. *Fond du Lac*, 109 Wis. 253. But beyond this it would appear that the acts of its officers could not operate as a waiver of the statutory requirement, nor could they estop the city.

PRINCIPAL AND AGENT—IMPUTATION OF AGENT'S KNOWLEDGE—PAYEE'S KNOWLEDGE OF MAKER'S INSOLVENCY.—S. was surety on a note given by Moorehead to the appellee bank. The maker of the note was a director of the bank at the time he gave his note to it, and was indebted to the bank beyond his ability to pay. It further appeared that Miller, the president of the bank, at the time of executing the note, was a practicing attorney, and had prepared and filed the petition and files of Moorehead in bankruptcy at the time he gave the note. *Held*, that the knowledge of Moorehead and that of Miller as to Moorehead's insolvency was not imputable to the payee bank.

Sebald v. *Citizens' Deposit Bank* (1907), — Ct. App. Ky. —, 105 S. W. Rep. 130.

The general rule which the defendant sought to apply here is that knowledge of the agent is the knowledge of the principal. But the rule does not apply where the agent has an adverse interest. Thus in *Frenkel* v. *Hudson,* 82 Ala. 158, Frenkel, the assignee of the Citizens' Mutual Insurance Co., insolvent, filed a bill against Hudson, the appellant and assignee of the Point Clear Improvement Co., to compel specific performance of an alleged agreement to execute a mortgage to secure the purchase money of certain real estate conveyed by the plaintiff corporation to Adams, and by the latter to the defendant corporation, the Point Clear Improvement Co. The Citizens' Insurance Co. sold the land to Goelet, president of the defendant corporation, upon the agreement that he or Adams, who acted as conduit of title, should give a mortgage for the purchase money. Inasmuch as Goelet bought the land for himself at one price, and sold it to the corporation of which he was president at another, his knowledge of the latent equity could not be imputed to the corporation. In *Innerarity* v. *Bank,* 139 Mass. 332, A. shipped a cargo of sugar to B. with authority to sell. The bill of lading recited that B. ordered the shipment, but failed to mention the agency. B. indorsed the bill of lading to the defendant bank, of which he was a director, and secured a large advance. The court says the principle that B.'s knowledge here is the defendant's knowledge cannot be applied, for B.'s position conflicts entirely with the idea that he represents the bank. In *De Kay* v. *Hackensack Water Co.,* 38 N. J. Eq. 158, one Voorhis was president of the defendant company and procured bonds to be issued contrary to law. He was also president of two banks which had purchased some of these bonds. The court said, "Where an agent representing two principals concocts a scheme to defraud one of them for the benefit of the other, it will be presumed that he did not disclose to the principal he intended to cheat the means by which he intended to effect his purpose." In *Dunlap* v. *Wilson,* 32 Ill. 517, there is a dictum which would seem to countenance the doctrine that the knowledge gained by an attorney while acting as such for one party is chargeable to another party, who may employ him in a subsequent transaction. The facts were as follows: One Gatewood, being indebted to the bank of Illinois, executed a mortgage on the land in controversy to secure payment of the debt. It was dated February 19, 1840, and was recorded March 8, 1845. After Gatewood's death in 1848, the assignees of the mortgage filed their bill against Gatewood's administrators and heirs to foreclose. A decree was obtained and the land sold October 19, 1852. At this sale the plaintiff purchased the land and received a deed from the master in chancery, the sale being confirmed by a decree of the court. On October 14, 1843, the defendant got a deed for these premises from Gatewood in payment of a debt. This deed was recorded January 20, 1844. It seems that one Eddy, attorney for the bank and also one of its directors, had helped Wilson to secure his debt from Gatewood, and that he had written some mortgages for the bank. The court said there was no evidence that Eddy drew this particular mortgage for the bank, and it could "hardly be inferred that because a person has acted as the attorney

of another, he therefore is fully informed of all his client's business. It might be otherwise, however, when he had been recently employed in connection with the particular transaction, as he then had the knowledge, and must be presumed to have acted with reference to it. Had it appeared that Eddy drew the mortgage in controversy, then the presumption would be indulged that he communicated the fact to Wilson before he received his conveyance." But the rule seems to be well established that a client is not chargeable with the knowledge his attorney acquired in the service of another. See *Warner* v. *Hall,* 53 Mich. 371; (at least where the information was gained in another case, *Ford* v. *French,* 72 Mo. 250); *Arrington* v. *Arrington,* 114 N. C. 151; *Larzelere* v. *Starkweather,* 38 Mich. 96; *Spielman* v. *Kliest,* 36 N. J. Eq. 199. But in *Taylor* v. *Evans* (Tex. Civ. App.), 29 S. W. 172, this rule was not followed where A. attempted to violate the insolvency laws. A. had counseled with X. as to his assignment, and agreed to delay till B. could make an attachment and levy upon A.'s property. B. employed X. to conduct the attachment proceedings. X.'s knowledge of the fraudulent design was imputed to B.

SALES—BREACH OF WARRANTY—ESTOPPEL.—Plaintiff, by a written contract, sold to the defendants a certain heating apparatus for the sum of $500. The contract provided that the defendants were to pay as follows: "Three hundred and fifty dollars when plant is completed, and one hundred and fifty dollars Feb. 1st, 1904, provided heater fulfills the guaranty." There was also the further provision: "Guaranties herein are conditioned on payments being made according to contract." When sued for the purchase price the defendant, among other defenses, set up a breach of warranty. The plaintiff insisted that by the terms of the contract, before defendants could avail themselves of the breach, they must have paid $350 when the plant was completed; that the payment of this sum was a condition precedent to the right to rely upon any warranty. *Held,* that the failure of the purchaser to pay the first installment of the purchase price, which was due by the contract when the plant was installed, did not estop the purchaser from setting up the breach of warranty as a defense to an action for the purchase price. *Campbell et al.* v. *Lodge No. 99, Ancient Free and Accepted Masons et al.* (1907), — Kan. —, 92 Pac. Rep. 53.

The case involves the performance of conditions precedent to the buyer's right of action. The general rule is stated in Vol. 30, AM. AND ENG. ENC. OF LAW, p. 199, as follows: "The contract of sale may, and frequently does, fix conditions precedent to the existence of any rights under the warranty, and a failure by the buyer to comply with such conditions, when they are not unreasonable, is fatal to his remedy for a breach of the warranty, whether he attempts to exercise it by an action in the warranty or by setting up the breach of warranty in defense to an action for the purchase money." That payment of the purchase price is not a condition precedent to the right of the buyer to pursue his remedy for a breach of the warranty is held in *Atkins* v. *Cobb,* 56 Ga. 86; *Thoreson* v. *Minneapolis Harvester Works,* 29 Minn. 341; *Fitzpatrick* v. *Osborne,* 50 Minn. 261; *Wiggins* v. *Hunter,* Harp.